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11 **Attorney for Plaintiff DAVID J. LEE**

12 **UNITED STATES DISTRICT COURT**

13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **DAVID J. LEE, an individual and, on**  
15 **behalf of others similarly situated,**

16 **Plaintiff,**

17 **vs.**

18 **CAPITAL ONE BANK and CAPITAL**  
19 **ONE SERVICES, INC., Virginia**  
20 **corporations, DOES 1 through 100,**  
21 **inclusive,**

22 **Defendants.**

12 )  
13 ) **Case No.: C-07-4599 - MHP**  
14 )  
15 ) **PLAINTIFF/APPELLANT'S**  
16 ) **SUPPLEMENTAL NOTICE OF INTENT**  
17 ) **TO DESIGNATE PORTIONS OF COURT**  
18 ) **TRANSCRIPT AND STATEMENT OF**  
19 ) **ISSUES**  
20 )  
21 )  
22 )  
23 )

1 TO DEFENDANTS CAPITAL ONE BANK AND CAPITAL ONE SERVICES, INC.,  
 2 AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT  
 3 PLAINTIFF/APPELLANT DAVID J. LEE, has ordered copies of the court transcript from the  
 4 December 10, 2007, Initial Case Management Hearing, and the March 3, 2008, hearing  
 5 regarding the Defendants' motion to dismiss the Plaintiffs' complaint, and intend to use it in  
 6 connection with their appeal.  
 7

8 In addition, Appellants will pursue the following issues on appeal:  
 9

10 1. Do Plaintiffs have standing under Article III of the United States' Constitution ("Art.  
 11 III"), California's Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.)("CLRA"),  
 12 and California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.)("UCL") to  
 13 maintain their action including

14 a. Do Capital One Bank/Capital One Services Inc. credit card holders, respectively,  
 15 challenging the unconscionability of terms of the Capital One Bank/Capital One Services Inc.  
 16 arbitration agreement and/or cardmember agreement (excluding the arbitration provision),  
 17 respectively, and that such unconscionability affects a violation of the CLRA and/or the UCL  
 18 have to file or actually participate in an arbitration in order to have standing under Art. III, the  
 19 UCL, and/or the CLRA when the Arbitration Provision explicitly provides 'Claim' [that are  
 20 subject to mandatory arbitration under the Provision] "means any claim, controversy or dispute  
 21 of any kind or nature between you and us" arising from "the Agreement and any of its terms ...  
 22 including the Arbitration Provision (including whether the claim is subject to arbitration),"  
 23 except for "**the validity and enforcement of any class action waiver...**" or at all?  
 24

1 b. Is not getting the full value of his contract -- in this instance, an enforceable  
2 contractual right to mandatory arbitration contained in the Capital One/Capital One Services Inc.  
3 cardmember agreement for which Plaintiff paid an annual fee -- an injury sufficient to establish  
4 standing under Art. III, the CLRA and/or the UCL?

5 c. Does the violation of the statutory rights given by the CLRA to not have  
6 unconscionable terms inserted in his contract pursuant to Cal. Civ. Code § 1770(a)(19), and by  
7 Civil Code § 1670.5, respectively, provide Plaintiffs with standing under Art. III, the CLRA  
8 and/or UCL?

9 2. Do unusual circumstances exist requiring, upon reversal and/or remand to the United  
10 States District Court for the Northern District of California, reassignment of his action to a new  
11 District Court Judge?"

12 Dated: April 10, 2008

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Matthew S. Hale, Counsel  
For Plaintiff/Appellant